JD–77–07
Baltimore, MD

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

PAREXEL INTERNATIONAL, LLC

and Case No. 5–CA–33245

THERESA NEUSCHAFER,
An Individual

Thomas J. Murphy and Daniel M. Heltzer, Esqs., for the General Counsel.
Harold R. Weinrich and Joseph E. Schuler, Esqs.
(Jackson Lewis LLP, Vienna, Virginia) for the Respondent.

DECISION

Statement of the Case

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Baltimore, Maryland, on September 18-20, and October 1-3, 2007. The charge was filed September 21, 2006, and the complaint was issued August 2, 2007.

The General Counsel alleges that Respondent, Parexel International, LLC, violated Section 8 (a)(1) of the Act by firing its employee, Theresa Neuschafer, on August 10, 2006. The General Counsel alleges she was terminated for engaging in concerted activities with other employees for the purpose of mutual aid and protection, by discussing wages. He also alleges that Respondent violated the Act in orally promulgating a rule prohibiting employees from discussing their wages, interrogating employees about protected activities and accusing Ms. Neuschafer of violating its confidentiality policies and agreements.

The General Counsel also alleges that the provision in Respondent's employee handbook regarding solicitation and distribution violates the Act. He makes the same allegation with regard to the paragraph on "confidentiality" in Respondent's Code of Business Conduct and Ethics.

At trial, the General Counsel amended his Complaint to allege that Respondent violated the Act by distributing to an employee of temporary employment agency, who had been referred to Respondent, a document prohibiting this employee from discussing her wages.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

Findings of Fact

I. Jurisdiction

Respondent, Parexel International, LLC, a corporation, performs research studies for pharmaceutical companies at the Harbor Hospital in Baltimore, Maryland. It purchases and receives goods valued in excess of $50,000 at this Baltimore facility which originate from points

outside of Maryland. Parexel derives gross revenues in excess of $250,000 at this location. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Alleged Unfair Labor Practices

Allegation relating to Theresa Neuschafer

Respondent hired Theresa Neuschafer, a Licensed Practical Nurse (LPN), in August 2004. She worked at Respondent's Baltimore, Maryland facility, which is located on the 7th floor of the Baltimore Harbor Hospital. Neuschafer worked as a research nurse performing safety and efficacy studies on new medicines, or medicines that were being tested for new applications. Throughout most of her employment at Parexel's Baltimore facility, Ms. Neuschafer worked on a team headed by Miempie Fourie, a study co-coordinator. Teams were generally staffed by a research nurse, such as Ms. Neuschafer, a research technician and a research assistant. Only nurses were permitted to administer medication to the study participants.

There is conflicting testimony as to how well Theresa Neuschafer performed her job. The testimony of her study coordinator, Fourie, is that her performance was satisfactory. The testimony of other management officials, particularly Elizabeth Jones, nurse manager, and then Manager of Clinical Operations beginning in July 2006, is far less complimentary. Jones, who also supervised Neuschafer, testified that she was moving towards terminating Neuschafer by the end of July or early August 2006.

At the end of July or early August 2006, Fourie asked Jones to remove Neuschafer from her team. It is well established that Neuschafer did not get along well with other members of her team, particularly, Mary Ann Green, the research assistant, and to a lesser extent, Nicole Rykowski, the research technician. Fourie testified that she requested that Neuschafer be transferred simply because it was easier to replace one person from her team than two.

It is unnecessary to resolve the conflicts in testimony regarding Theresa Neuschafer's performance. That is so because it is absolutely clear that she would not have been fired on August 10, 2006, but for a conversation she had with employee John Van der Merwe on the night of July 28, 2006 and her conversation with Lisa Turek, the new nurse manager, a day or two later. Turek, who had been promoted to this supervisory position a few weeks earlier, went to Elizabeth Jones and relayed to Jones what Neuschafer had told her about Neuschafer's conversation with Van der Merwe.[1]

As I told the parties on the last day of the hearing, I find that Respondent would not have fired Theresa Neuschafer on August 10, 2006 but for her conversation with Van der Merwe and the fact that this conversation was relayed to Elizabeth Jones by Ms. Turek. I base that finding on the record as whole, such as:

The timing of Ms. Neuschafer's termination in relation to her conversations with Van der Merwe, Turek, the August 4, meeting, and the absence of any intervening event relevant to her discharge;

[1] Tr. 1180, line 10 should read: "supervisor and agent," rather than "supervising agent."

Elizabeth Jones' testimony that the conversation Neuschafer had with Van der Merwe was a factor in Neuschafer's termination, Tr. 580-81;

The testimony of Respondent's H.R. consultant Lisa Roth at Tr. 622 that this conversation was "the last straw," leading to Neuschafer's termination;

The testimony of Jones and Roth that no decision had been made to terminate Ms. Neuschafer prior to Jones becoming aware of Neuschafer's July 28 conversation with Van der Merwe and the subsequent conversation between Neuschafer and Turek, Tr. 1059-60, 1124.

The July 28, 2006 conversation between Theresa Neuschafer and John Van der Merwe

I fully credit Theresa Neuschafer's uncontradicted account of her conversation with John Van der Merwe. Van der Merwe left his employment with Respondent at the end of June 2006 and returned to work with Parexel on July 24.

Neuschafer saw Van der Merwe at the nurse's station between 7:00 and 8:00 p.m. on July 28. Employees Monique Gray and Michelle Scott were also present, but apparently did not participate in the discussion. There is no evidence that Neuschafer consulted with either Gray or Scott before making inquiries to Van der Merwe.

Neuschafer asked Van der Merwe if he got a raise to return to work for Respondent. Van der Merwe responded by telling her that he got a raise and was now the night shift supervisor. In fact, he had not gotten a raise to come back. Neuschafer then asked if Mr. Van der Merwe's wife, Izel, who had left Respondent the prior week, would also be returning with a raise.

Van der Merwe responded, "Absolutely, we're clever people and Liz [Jones] is going to look after us." Van der Merwe, his wife and Elizabeth Jones are white "Afrikaners," descendents of the Dutch settlers in South Africa.[2] Jones worked for Parexel in South Africa and her first language is Afrikaans, the Dutch dialect spoken by the ethnic Dutch in that country.

Neuschafer's conversation with Lisa Turek, a day or two later

Neuschafer talked to her immediate supervisor, Lisa Turek, the new nurse manager, a day or two after her conversation with Van der Merwe. She told Turek that Van der Merwe told her he had come back to Parexel with a raise and that Neuschafer thought the whole unit should quit and come back with a raise. Neuschafer also told Turek that Izel Van der Merwe would be coming back with a raise. Lastly, she told Turek that John Van der Merwe said to her

[2] Miempie Fourie is also an "Afrikaner."

that Liz Jones was going to look after the South Africans and that they all socialized together.[3]Turek reported her conversation with Neuschafer to Elizabeth Jones.[4]

Jones and Lisa Roth meet with Neuschafer on August 4, 2006

Jones summoned Neuschafer to meet with her and Human Resources Consultant Lisa Roth on August 4, 2006, to discuss her conversation with Van der Merwe. Neuschafer related the substance of her conversation with Van der Merwe to Jones and Roth. Jones asked Neuschafer if she had talked to anyone about the conversation other than Lisa Turek. Neuschafer replied that she had not. Neuschafer testified that Jones then said that she had violated Respondent's confidentiality agreements and that in that agreement she promised not to discuss salaries. Jones, at least implicitly denied that she did so, Tr. 1145-49. Neuschafer did not make this contention in a deposition taken by Respondent's counsel on August 14, 2007, in a parallel proceeding under the Sarbanes-Oxley Act. For this reason, I credit Jones.[5]

Lisa Roth testified that at this meeting, Jones stated that she had heard that the South Africans had barbeques together every weekend.[6] Neuschafer responded that's what she heard and that South African employees were being accorded favored treatment.[7]

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[3] Turek's account of the conversation is not materially different. However, she testified that rather than telling her that John Van der Merwe and his wife were returning to Parexel with a raise, Neuschafer was asking Turek the terms on which they were returning. According to Turek, Neuschafer also discussed another Afrikaner, Elizabeth Langenhugen, who Neuschafer described as "another clever South African," who was making more money as a temporary coordinator. I find both accounts credible.

[4] Turek testified that Monique Gray approached her and told her that she had overheard the conversation between Van der Merwe and Neuschafer on July 28. She testified further that Gray was upset and that is why she went to Jones. However, she also testified that she could have talked to Jones about Neuschafer's conversation with Van der Merwe before she spoke with Gray.

[5] As a result of crediting Jones, I dismiss the allegations contained in paragraphs 5 (a)-(c), 8, 9(c) and 10(b) which are all predicated on Neuschafer's testimony that Jones told her that she was violating her confidentiality agreement by discussing wages with other employees.

[6] Jones apparently heard this from her boss, Rachel Garrido. Garrido testified that in about July 2006, employee Cecelia Laughlin told her that the South Africans were having barbeques every weekend, that they were planning on taking over the Baltimore facility and that they were after Garrido's job. Garrido testified that Laughlin told her that she heard this from Theresa Neuschafer.

Jones testified that Garrido came to her and told her that she had been warned that Jones was going to take her job. Jones testified that she was led to believe that Neuschafer was the source of this rumor.

[7] The General Counsel argues that I should draw an adverse inference from Roth's inability to produce notes she believed she took at the August 4 meeting. I agree that if Roth could produce notes of her August 2 meeting Jones, one would expect her to be able to produce notes for August 4. However, I believe Roth's inability to find the August 4 notes is an insufficient reason for crediting Neuschafer's account of the August 4 meeting over that of Jones. Neuschafer's testimony regarding Jones' alleged statement that she violated the confidentiality agreement by discussing wages is sufficiently significant that I would expect that she would have mentioned it in her deposition, if that is what Jones said.

Elizabeth Jones fired Theresa Neuschafer on August 10, 2006. She did not meet with Neuschafer between the 4th and the 10th.

Analysis

There is only one issue in this case, namely whether Theresa Neuschafer engaged in activity protected by Section 7 of the Act when she spoke to John Van der Merwe on July 28, 2007 and/or when she spoke to Lisa Turek a day or two later. If either conversation is protected, Respondent violated Section 8(a)(1) in terminating Neuschafer's employment. If both conversations are unprotected, Respondent did not violate Section 8(a)(1) in terminating Neuschafer.

Regardless, of whether one believes that Jones was moving towards termination, it is clear that she would not have fired Neuschafer on August 10 but for these conversations. Moreover, given the fact that Neuschafer had been transferred to a new study team just before her termination, I do not credit Jones' testimony to the extent it suggests that Neuschafer's termination was imminent before she learned of the conversation with Van der Merwe.

Section 8(a)(1) provides that it is an unfair labor practice to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7. Section 7 provides that, "employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and *to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection*… (Emphasis added)"

In *Myers Industries (Myers I),* 268 NLRB 493 (1984), and in *Myers Industries (Myers II)* 281 NLRB 882 (1986), the Board held that "concerted activities" protected by Section 7 are those "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." However, the activities of a single employee in enlisting the support of fellow employees in mutual aid and protection is as much concerted activity as is ordinary group activity. Individual action is concerted so long as it is engaged in with the object of initiating or inducing group action, *Whittaker Corp.,* 289 NLRB 933 (1988); *Mushroom Transportation Co.,* 330 F.2d 683, 685 (3d Cir. 1964).

Additionally, the Board held in *Amelio's,* 301 NLRB 182 (1991) that in order to present a prima facie case that an employer has discharged an employee in violation of Section 8(a)(1), the General Counsel must establish that the employer knew of the concerted nature of the activity.

For the reasons stated below, I conclude that Respondent did not violate Section 8(a)(1) in terminating Theresa Neuschafer's employment.

Neuschafer's activity was not "concerted."

Concerted complaints about favoritism generally and/or favoritism with regard to wages are protected, *North Carolina License Plate Agency,* 346 NLRB No. 30 (2006); *Rock Valley Trucking Co., Inc,* 350 NLRB No. 10 (June 25, 2007). The issue herein is whether any discussion between employees or between an employee and a supervisor about wages or about favoritism concerning wages is concerted, and if not, under what circumstances would such discussions not be concerted.

Theresa Neuschafer did not consult with any other employees before discussing with John Van der Merwe the terms upon which he returned to work for Respondent. Similarly, she did not consult with other employees before relaying the substance of that conversation to Turek. Neuschafer did not claim to be speaking on behalf of other employees to the extent that she suggested to Turek that the favored treatment of "South Africans" was unfair. Similarly, Neuschafer did not indicate to Turek that she was speaking for other employees when she said that "the whole unit should quit and come back with a raise."[8] Thus, there is no direct evidence that Neuschafer had these conversations with the object of initiating or inducing group action.

In a number of cases the Board has found that concerns raised by a single employee in a group meeting are assumed to have a concerted objective, *Cibao Meat Products,* 338 NLRB 934 (2003); *Winston-Salem Journal,* 341 NLRB 688 (2003); *Air Contact Transport, Inc.,* 340 NLRB 688 (2003).

In the instant case, Theresa Neuschafer did not discuss wages or favoritism in a group meeting. Her conversation with Van der Merwe was a one-on-one conversation, although two other employee bystanders may have overheard it. Also she never indicated to Van der Merwe that she was speaking on behalf of anyone other than her self.

Each of the cases relied upon by the General Counsel at page 22 of his brief are materially distinguishable from the instant matter.[9] In each of those cases, save one,[10] the discriminatee or discriminatees discussed wages with at least one other employee, whose interests were consistent or compatible with their own. In this case, Ms. Neuschafer discussed wages with only one employee,[11]John Van der Merwe. She was clearly not discussing Van der Merwe's wages because she was concerned with his interests.

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[8] *Bryant & Cooper Steakhouse,* 304 NLRB 750, 752 (1991), cited by the General Counsel at page 24, n. 25 of his brief is easily distinguishable. The employee in that case, who denied being a spokesman for others, had in fact spoken with other employees, prior to telling his employer, "we are unhappy." His employer had also overheard him suggesting that he was going to go to the NLRB and "the Union."

[9] The General Counsel cites the following cases for the proposition that any discussion between two employees that touches on upon wages constitutes concerted activity for mutual aid and protection: *Salvation Army,* 345 NLRB No. 38 at slip op. 12 (2005); *Trayco of S.C.,* 297 NLRB 630, 633-34 (1990); *Aroostook County Regional Ophthalmology Center,* 317 NLRB 218, 220 (1995); *Super One Foods,* 294 NLRB 462, 463 (1989); *U.S. Furniture Industries,* 293 NLRB 159, 161 (1989); *North Carolina License Plate Agency #18,* 346 NLRB No. 30 (2006).

L.G. Williams Oil Co., 285 NLRB 418, 423 (1985), cited by the General Counsel at page 23 of his brief, is also a case in which the discriminatee discussed her concerns, regarding the fairness of other employees' wages, with at least one other employee who may have had similar interests.

[10] In *North Carolina License Plate Agency, supra,* the discriminatees complained in unison at a meeting with management about favoritism towards another employee.

[11] Lisa Turek was a statutory supervisor and therefore not an employee within the meaning of the Act.

Neither Neuschafer's conversation with John Van der Merwe nor her conversation with Lisa Turek was for "mutual aid or protection."

Neuschafer certainly wasn't concerned with the welfare of Van der Merwe or his wife when she talked to him on July 28. Similarly, she was not talking to Turek because she was concerned with Turek's interests or that of the Van der Merwes.

The issue herein is whether it can be inferred that she engaged in the conversation for the mutual aid or protection of all non-South African employees at Parexel. Unlike the situation in *Phillips Petroleum Co.,* 339 NLRB 916 (2003), there is no evidence that Neuschafer had consulted with other employees about favoritism towards South Africans before speaking to either Van der Merwe or Turek. There is no evidence, as there was in *Phillips,* that any other employee encouraged her to speak up about the issue of favoritism generally or favoritism with respect to wages.

Assuming either conversation was concerted and for "mutual aid or protection" was it "protected?"

Finally, there is an issue in this case as to whether Theresa Neuschafer's conversations are protected by Section 8 (a)(1), assuming that she was engaged in concerted activity for the mutual aid and protection of employees at Parexel. Neuschafer was certainly promoting ethnic disharmony at Parexel and while one may be protected by concertedly objecting to favoritism on the basis of ethnic origin in some circumstances, it may well be that an employee may not be so protected in others. In this vein I would rely on *Kormatsu America Co.,* 342 NLRB 649, 650 (2004) and *Noah's New York Bagels,* 324 NLRB 266, 275 (1997).

In the instant case, I conclude that Neuschafer's conversations would have been protected, if they met the other criteria under Section 7. John van der Merwe led Neuschafer to believe that South Africans were benefiting from favored treatment and she thus had a protected right to protest such favoritism.

Did Respondent's termination of Theresa Neuschafer violate Section 8(a)(1) in that it was a pre-emptive strike to prevent her from discussing her perception of favoritism with other employees?

I find that Respondent terminated Theresa Neuschafer, in part, so that he she could not discuss her perception that Afrikaners were the beneficiaries of favoritism with other employees who might also be concerned with this matter. At Tr. 687-88, Neuschafer testified that on August 4, Jones asked her who she talked to about her conversation with Van der Merwe. Neuschafer testified that she told Jones that she only discussed this conversation with Turek. According to Neuschafer, Jones replied, "Are you sure. Is there anybody else you talked to about this? And I said no, I talked to Lisa Turek."

Elizabeth Jones did not specifically contradict this testimony. Moreover, the proposition that Respondent terminated Neuschafer to prevent her from spreading her concern over favoritism towards Afrikaners is supported by Jones' testimony at a deposition taken in connection with Neuschafer's proceeding under the Sarbanes-Oxley Act.

At this deposition, Jones testified that, "[Van der Merwe] comes back to work. The next week I heard stories on the unit of how Terry just gave the conversation she had with him"… "It was reported to me by one of the night employees, also by [Lisa Turek]"…

"[Monica] Gray, what did she report to you?"

"That there was a conversation with Terry, and Terry is telling the unit, or Terry is telling people that John is a clever person if he's coming back with a raise or something."

Tr. 1161, quoting Jones' deposition testimony.[12]

Lisa Roth's testimony also indicates she and Jones met with Neuschafer on August 4, due to a concern that Neuschafer had been talking to other employees about her conversation with Van der Merwe.

In some respects, Neuschafer's termination was a pre-emptive strike to prevent her from engaging in activity protected by the Act, *see Compuware Corp.,* 320 NLRB 101, 102-103 (1995). However, I have not encountered any precedent for the proposition that I can find a violation on this basis without evidence that the alleged discriminate had in fact engaged in concerted protected activity. Therefore, I decline to affirm the Complaint on this basis.

Assuming Theresa Neuschafer was discharged in violation of Section 8(a)(1), the fact that she violated Respondent's rules by taking study documents home does not affect her entitlement to reinstatement and backpay.

Respondent argues that even if Ms. Neuschafer was discharged in violation of the Act, she should not be entitled to reinstatement and backpay because she violated Respondent's rules by taking home documents from drug studies that the company performed. I find, however, assuming that I am wrong on the issue of protected concerted activity, that Neuschafer's violation of these rules should not affect her entitlement to reinstatement and back pay.

It is absolutely clear that Respondent was lax in enforcing this rule. Rachel Garrido, Respondent's Manager of Clinical Operations, testified that occasionally employees took study documents home. She also testified that Respondent asks (but apparently does not demand) that employees bring these documents back to its worksite and shred them. However, there is no evidence as to how uniformly employees were told about the importance of bringing the documents back. There was obviously no mechanism to assure that employees did so.

Thus, if Ms. Neuschafer violated Respondent's rules by taking study documents home, this conduct was to some extent condoned. The danger to the confidentiality of the study documents was not materially increased by the fact that Ms. Neuschafer failed to return them. If she was inclined to disclose the documents to parties who Respondent would not want to see them, she could easily have done so and then returned the materials to the hospital. She could also have copied the study documents before returning them.

[12] At the instant hearing, Jones testified that she did not speak to Monique Gray herself. She stated that Lisa Turek reported to her what Gray had said.

Alleged facially overbroad rules[13]

The General Counsel alleges that two rules maintained by Respondent violate Section 8(a)(1) because they are overbroad. These rules are:

The solicitation and distribution rule found at page 43 of Respondent's employee handbook (GC Exh. 9), which provides:

> PAREXEL employees deserve the opportunity to perform their work without interruption by unwarranted solicitation or distribution of non-work-related materials. For this reason, persons not employed by the company may not solicit or distribute literature on the premises at any time. Additionally, PAREXEL employees are prohibited from distributing literature on the premises at any time by any means, including through the company's mail system. Such solicitation/distribution must be approved, in advance, by Human Resources…

Respondent's Confidentiality rule

Respondent Code of Business Conduct and Ethics, GC Exh. 10, provides at page 2:

> Employees, officers and directors must maintain the confidentiality of information entrusted to them by the Company and other companies, including our clients and suppliers, unless disclosure is authorized or legally mandated. Unauthorized disclosure of confidential information is prohibited.
>
> You should take appropriate precautions to ensure that confidential or sensitive business information, whether it is proprietary to the Company or another company, is only communicated to people who need to know such information in order to perform their responsibilities for the Company and is not communicated to anyone outside the Company unless an appropriate confidentiality agreement is in place.

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[13] Section 10(b) of the Act provides that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge. The United States Supreme Court in *Fant Milling Co.,* 360 U.S. 301, 307-08 (1959) held that a charge merely sets in motion the NLRB's inquiry; it need not be a specific as a judicial pleading. The General Counsel's complaint can therefore deal with any unfair labor practice related to those alleged in the charge and which grow out of the allegations in the charge while the proceeding is pending before the Board.

In *Redd-I, Inc.,* 290 NLRB 1115 (1988) and *Nickles Bakery of Indiana,* 296 NLRB 927 (1989) the Board held that a Complaint allegation satisfies the *Fant Milling* criteria if it involves the same legal theory as that contained in a pending timely charge, arises from the same factual circumstances or sequence of events as a timely charge and whether a respondent would raise similar defenses.

The second amended charge in this case filed on April 18, 2007, alleges that Respondent has maintained an overly broad solicitation/distribution policy. Section 10(b) of the Act does not preclude litigation of a policy, such as the Parexel policies at issue in this case, which remains in force within six months of a related charge, *Carney Hospital,* 350 NLRB No. 56 (2007).

The allegation raised at trial pertaining to Parexel's distribution of the Sparks policy on confidentiality is sufficiently related to the second amended charge to meet the R*edd-I* and *Fant Milling* criteria. It was also fully and fairly litigated.

> Only the Company's authorized spokesman may respond to inquiries concerning the Company from the media, market professionals (such as securities analysts, institutional investors, investment advisors, brokers and dealers) and security holders. If you receive inquiries of this nature, you must decline to comment and refer the inquirer to your supervisor or one of the Company's authorized spokespersons. The Company's policy on Corporate Disclosure, which includes a list of the Company's authorized spokespersons, is available in the "Legal Affairs" section of the "Policies and Procedures" section of the Company Intranet.
>
> You must also abide by lawful obligations that you have to your former employer or others. These obligations may include restrictions on the use and disclosure of confidential information, restriction on the solicitation of former colleagues to work at the Company and non-competition obligations.

The standard for evaluating these rules is set forth in *Lutheran Heritage Village Hospital-Livonia,* 343 NLRB 646, 647 (2003). If the rule explicitly restricts Section 7 activities, it is illegal. If not, the rule's legality depends on whether 1) employees could reasonably construe the language to prohibit Section 7 activities; or 2) the rule was promulgated in response to union activity; or 3) the rule has been applied to restrict Section 7 rights.

Since I have not credited Theresa Neuschafer's testimony that Elizabeth Jones relied on the confidentiality policy in their meeting of August 4, the only issue is whether either of these rules is illegal because employees could reasonably construe either one to prohibit Section 7 activities.

Applying this standard, I find that the solicitation and distribution rule violates Section 8(a)(1) and that the confidentiality rule does not. With regard to the latter, it is obviously directed mainly to confidential information the company receives from and provides to pharmaceutical company clients.

The solicitation and distribution rule, however, clearly could be construed to apply to literature about unionization or wages, benefits and other terms and conditions of employment.

In recognition of the fact that a hospital's primary function "is patient care and that a tranquil atmosphere is essential to carrying out that function," the Board has permitted health care facilities to impose somewhat more "stringent prohibitions" on solicitation and distribution than are generally permitted. *St. John's Hospital & School of Nursing, Inc.*, 222 NLRB 1150 (1976), enfd. in part 557 F.2d 1368 (10th Cir. 1997); see also *Beth Israel Hospital v. NLRB*, 437 U.S. 483 (1978) (approving the standard applied by the Board in *St. John's Hospital*). A hospital may prohibit solicitation and distribution at any time in immediate patient care areas (such patients' rooms, operating rooms, X-ray areas, therapy areas), even during nonworking time. *St. John's Hospital*, supra at 1150-1151; see also *Health Care & Retirement Corp.*, 310 NLRB 1002, 1004-1005 (1993). However, a hospital may not ban solicitation and distribution in other areas to which patients and visitors have access (such as lounges and cafeterias) unless the evidence shows that such a ban is necessary to avoid a disruption of patient care. Id.

To justify such a facially unlawful rule, an employer bears the burden of showing that it communicated or applied the rule in a way that conveyed a clear intent to permit

protected activities in nonworking areas on nonworking time, *Ichikoh Mfg.,* 312 NLRB 1022 (1993). In the present case, Respondent did not meet this burden.

Additionally, any rule that requires employees to secure permission from their employer prior to engaging in protected activities on an employee's free time and in nonwork areas is unlawful, *Teletech Holdings, Inc.,* 333 NLRB 462 (2001); *Brunswick Corp.,* 282 NLRB 794, 795 (1987).

Confidentiality agreement provided to temporary employees

At trial, the General Counsel moved to amend the Complaint to allege that Respondent violated Section 8(a)(1) in giving temporary employee Enid Dukule a "Confidentiality Agreement for Parexel" to sign on or about April 17, 2007. It is uncontroverted that Respondent gave this document, GC Exh. 20, to Dukule when she reported to work at Parexel, at the direction of Sparks, the temporary employment agency which referred her to Respondent. The document was not provided to Parexel employees, but may have been given to other temporary employees referred to Respondent by Sparks.

The document provides in pertinent part:

> PAREXEL considers non public information about the Company and its customers to be proprietary and confidential. Under no circumstances should you discuss with a friend, acquaintance or other person any of the confidential affairs of PAREXEL or its customers. When your work assignment at PAREXEL ends, all Company and customer information, including personal data must remain at the company.
>
> We must impress the importance of confidentiality upon each employee who goes on assignments at PAREXEL; therefore, you are requested to sign the following pledge:
>
> During my work assignment at PAREXEL, I understand that I may have access to confidential proprietary and trade secret information at the Company. This information includes, but is not limited to information regarding the Company's:
>
> Existing and future projects
>
> …
>
> Customers, suppliers, and consultants …
>
> …
>
> Personnel information (including, without limitations, employee addresses, telephone numbers, compensation and benefits)
>
> I understand that both during and after my work assignment at the Company, I must keep such information confidential and not use it or disclose it to anyone without the written consent of the Managing Director, Legal Affairs on behalf of

> the Company, except auth authorized in the performance of my work assignment…

Both parties have focused on whether Respondent can be held responsible for the dissemination of this document to Dukule, who worked at Parexel under the supervision of Parexel management, although nominally an employee of Sparks, a temporary employment agency.[14]

Neither party addressed whether the document is violative of Section 8(a)(1) under the standards set forth in *Lutheran Heritage Village Hospital-Livonia,* supra. It is I believe a close question as to whether an employee would reasonably conclude that the policy addresses discussions of wages and benefits with other employees. The context of the document is clearly Sparks concern that its employees not reveal the vast amount of confidential information they might have access to at Parexel. On the other hand, the reference to personnel information does not make clear that employees are allowed to discuss their wages and other terms and conditions of employment. On balance, I conclude that the document violates Section 8(a)(1).

Regardless of the fact that Respondent did not draft the document and did not provide it to its employees, its dissemination could impact their Section 7 rights. A temporary employee, who interpreted the document to prohibit him or her from discussing wages, would feel restrained from entering into such a discussion with Parexel employees. Since the temporary employees worked with Parexel employees, this also restrained the Section 7 rights of Respondent's employees.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The Respondent, Parexel, International, LLC, Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining an overly broad solicitation and distribution rule that does not convey a clear intent to permit protected activities in nonworking areas on nonworking time, and

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[14] While Respondent would seem to be a joint employer of Dukule, the General Counsel did not make such an allegation. Thus, I cannot find that Respondent violated the Act on a joint employment theory because this was not fully and fairly litigated.

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

which requires employees to seek advance approval by Respondent of protected activities.

(b) Distributing to any employee of any employer who works at the Parexel facility, in proximity to Parexel employees, any document that can reasonably be read to prohibit that employee from discussing wages, hours and other terms and conditions of employment with employees.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind, or revise its solicitation and distribution rule so as to convey a clear intent that protected activities are permitted in nonworking areas on nonworking time and that advance approval for protected activities is not required.

(b) Advise employees in writing of the rescission or revision of the solicitation and distribution rule.

(c) Within 14 days after service by the Region, post at its Baltimore, Maryland facility, copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 18, 2007.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., December 11, 2007.

_____
Arthur J. Amchan
Administrative Law Judge

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT maintain a rule prohibiting solicitation and distribution that does not convey a clear intent to permit protected activities, such as activities relating to wages, hours and other terms and conditions of employment, in nonworking areas on nonworking time, and/or which requires employees to seek advance approval by Respondent of such protected activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind or revise our solicitation and distribution policy to convey a clear intent that our policies do not prohibit protected activities, such as activities relating to wages, hours and other terms and conditions of employment, in nonworking areas on nonworking time, and do not require employees to seek advance approval by Respondent of such protected activities.

PAREXEL INTERNATIONAL, LLC

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

103 South Gay Street, The Appraisers Store Building, 8th Floor
Baltimore, MD 21202-4061
Hours: 8:15 a.m. to 4:45 p.m.
410-962-2822.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 410-962-3113.